



FINAL REPORT

Gambling Casino Restricted License Study Committee

January 2016

MEMBERS:

Senator Wally E. Horn,
Co-Chairperson
Senator Jeff Danielson
Senator Dan Zumbach

Representative Guy Vander Linden,
Co-Chairperson
Representative Jake Highfill
Representative Kirsten Running-Marquardt

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AUTHORIZATION AND APPOINTMENT

The Legislative Council established the Gambling Casino Restricted License Study Committee to conduct a study regarding licensing of a nonsmoking casino in Cedar Rapids, and submit recommendations, if deemed appropriate, to the General Assembly by January 1, 2016.



Gambling Casino Restricted License Study Committee

I. Committee Proceedings

The Gambling Casino Restricted License Study Committee conducted one meeting at the Statehouse during the 2015 Interim. The meeting occurred on Tuesday, October 20, 2015.

A. Overview of Meeting

The committee considered presentations by the Legislative Services Agency (LSA) giving an overview of Iowa's gambling revenues and gambling laws. The committee heard testimony about county endowment funds, the casino licensing process, secondhand smoke, the reasons for a new casino in Linn County, and the status of a lawsuit against the Iowa Racing and Gaming Commission.

B. Review of Committee Charge and Introductory Remarks

Co-chairperson Horn reviewed the history of an attempt by the city of Cedar Rapids to obtain a casino license from the Iowa Racing and Gaming Commission. Due to the floods of 2008, Cedar Rapids is in need of increased economic development. To increase revenue and economic activity in Cedar Rapids and the rest of Linn County, the residents of Linn County passed a referendum approving the construction of a casino in the county. However, Cedar Rapids' application to obtain a casino license from the commission was denied because, the commission reasoned, a Cedar Rapids casino would negatively impact revenue at the existing casinos surrounding Cedar Rapids. Because a large portion of the population of Cedar Rapids is against smoking in public places for health reasons, Co-chairperson Horn believes the construction of a smoke-free casino is the best approach.

Co-chairperson Vander Linden stated that he was present to listen and learn, and hoped the committee could agree on a conclusion.

C. Overview of Casino Licensing and Revenues

Ms. Christin Mechler, Legislative Analyst, Fiscal Services Division, LSA, provided an overview of the distribution of Iowa's gaming revenue over the last five fiscal years. In FY 2014-2015, state gaming revenue totaled \$313.9 million, a 1.7 percent increase over FY 2013-2014. Of that total, \$284 million was distributed to various state funds as required by statute (a 1.4 percent increase over FY 2013-2014), \$11 million was allocated to counties without a casino (a 1.9 percent increase over FY 2013-2014), and \$13.8 million was allocated to counties with a casino (a 2.1 percent increase over FY 2013-2014). Patron admissions to casinos were up 3.5 percent in FY 2014-2015.

Ms. Mechler also reviewed the state wagering tax. She explained that the wagering tax is calculated on a casino's adjusted gross receipts (AGR), meaning gross receipts less winnings paid to customers, in the following manner: the first \$1 million of AGR are taxed at a rate of 5 percent, the next \$2 million of AGR are taxed at a rate of 10 percent, and AGR above \$3 million are taxed at 24 percent for licensees with certain racetrack enclosures and 22 percent for other licensees.



Mr. Ed Cook, Senior Legal Counsel, Legal Services Division, LSA, provided an overview of gaming law and casino licensing. Until 1972, Iowa prohibited lotteries under the Iowa Constitution. The term lotteries was broadly defined to include most forms of gambling. After 1972, Iowa continued to prohibit gambling by statute, but provided for certain exceptions. In 1983, Iowa authorized pari-mutuel wagering for horse and dog racing. In 1989, Iowa authorized gambling games, including slot machines, poker, and table games, and extended the jurisdiction of the commission to include licensed casinos with these games. In order to apply for a casino license, a county is required to first pass a referendum authorizing the construction of a casino in the county. After a county has passed a referendum, Iowa Code chapter 99F provides that the commission has the power to investigate applicants for a casino license, to determine the eligibility of applicants for a license, and to select among competing applicants the applicant which best serves the interests of the citizens of Iowa. The commission has also adopted rule 491-1.7 of the Iowa Administrative Code, which further establishes criteria for granting and renewing casino licenses. The criteria include compliance, gaming integrity, economic impact and development, efficient and safe operation, community support, the nurture of the racing industry, and other factors.

In response to a question, Mr. Cook noted that “efficient and safe operation” is not defined by the rule, and it is unclear whether the danger of secondhand smoke would fall under that criteria.

D. Review of Pending Legislation

Mr. Cook reviewed legislation from the previous legislative session that dealt with casino licensing. Senate File 24 provides a tax exemption for promotional (free) plays, doubles the percentage of wagering tax revenue allocated to counties without casinos, requires a smoke-free casino license to be issued to a city with a population between 100,000 and 150,000 people, and establishes a 10-year moratorium on the issuance of new casino licenses. Senate File 139 requires the commission to establish a process for issuing smoke-free casino licenses to cities with populations of more than 50,000 people. House File 255 requires the commission to establish a process for issuing up to two smoke-free casino licenses after approval by a county, and requires an annual report of the impact of smoke-free casinos.

Committee members noted the importance of updating and revising the statutes governing casino licensing in order to modernize the Iowa Code and maximize its applicability.

E. Overview of County Endowment Funds

Ms. Kristi Knous, President, Greater Des Moines Community Foundation, provided an overview of the County Endowment Fund program. Since 2004, Iowa counties have had a network of endowments funded by a percentage of the state wagering tax that were created to meet community needs and improve quality of life. These endowments exist in the 84 Iowa counties that do not have a casino or racetrack. She explained that 13 Iowa county endowment funds meet national standards for foundations, and are eligible to host affiliated Iowa county endowment funds that do not meet the standards. Since 2004, county endowments have given over 21,000 donations totaling \$167 million to Iowa charities. Typically, county endowments retain 25 percent of the funds for sustainability, and apportion 75 percent of the funds for grants to charities or community projects.



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Mr. Joe Sorenson, Director of Affiliate Relations, Greater Des Moines Community Foundation, provided an example of a county endowment, explaining that Story County's endowment fund has awarded approximately \$8 million to over 120 charitable entities and community projects.

Committee members noted that the county endowment funds do a lot of good things around the state, and welcomed any recommendations that Ms. Knous and Mr. Sorenson might make to the General Assembly.

F. Review of the Iowa Racing and Gaming Commission

Mr. Brian Ohorilko, Administrator, Iowa Racing and Gaming Commission, presented an overview of the commission and the casino licensing process. The commission has five members, is attached to the Department of Inspections and Appeals, and is overseen by the Governor. He reviewed the annual duties of the commission, which include gambling season approvals, license renewals, financial statement reviews, and the collection of regulatory fees. He also reviewed the monthly duties of the commission, which include request-for-transaction approval review, the investigation of alleged violations by licensees, the review of appeals filed by licensees, and the review of proposed changes to the Iowa Administrative Code. He explained that the commission also has staff present at the facilities of each licensee that are responsible for monitoring the daily operations of the licensees, including testing slot machines and table games, officiating pari-mutuel races, and monitoring the health and welfare of animals.

Mr. Ohorilko explained that after residents of a county have passed a referendum, the process for obtaining a casino license typically lasts 5 to 10 months. Most steps in the process are taken at meetings open to the public. The process includes an analysis of underserved markets, a public announcement of the application process, an applicant presentation on the scope of the project, an applicant presentation on financing for the project, a background report by the Iowa Division of Criminal Investigation (DCI) which is not available to the public, a site visit for commission members, a public comment period, a question-and-answer session for commission members, and a final decision by the commission. He noted that the level of importance given to each criteria listed for granting a casino license under rule 491-1.7 of the Iowa Administrative Code can be different for each member of the commission.

Committee members observed that in addition to being overseen by the Governor, the commission was created by, and receives its authority to grant casino licenses from, the General Assembly.

In response to a question regarding whether the commission considered secondhand smoke a safety issue, Mr. Ohorilko explained that the commission has not had an opportunity to consider the issue. At the time of the application by Cedar Rapids for a casino license, the issue of secondhand smoke was not brought before the commission for consideration. Members of the committee pointed out that a smoke-free environment could raise casino revenue. Mr. Ohorilko remarked that the commission considers public input very closely, and any study performed by the commission would be funded by application fees from license applicants.



In response to a question regarding tribal casinos, Mr. Ohorilko explained that Iowa has three tribal casinos which are regulated by tribal council compacts. The Department of Inspections and Appeals receives inspection fees from tribal casinos, but the casinos are otherwise not taxed by the state. Members of the committee noted that the surrounding communities do not benefit from a tribal casino as they would benefit from a casino licensed by the state.

Committee members commented that a negotiation process for approval of a casino license after a license application has been initially denied would be beneficial.

G. Secondhand Smoke and the Casino Exemption from the Smokefree Air Act

Mr. Gary Streit, Volunteer, American Cancer Society, discussed the dangers of secondhand smoke. During his 38 years volunteering for the American Cancer Society, the five-year survival period for cancer has increased approximately 17 percent. He recognized that this increase in survival is due in part to the passage of Iowa's Smokefree Air Act in 2008, which banned smoking in most public places. However, 6,400 Iowans still die every year from tobacco-related health issues.

Mr. Streit explained that casinos are exempt from Iowa's Smokefree Air Act. He urged the members of the committee to advocate for the elimination of this exemption. He indicated that there is no evidence that the elimination of the exemption would have a negative effect on the casinos' profits. The profits of bars and restaurants did not suffer when they were required to go smoke free in 2008. In the alternative, he observed that if profits would suffer, casinos are prioritizing profits over the health of their employees. He explained that employees of casinos often do not have the means to leave a well-paying job at a casino for other employment. He observed that the elimination of the exemption would be consistent with the policies of Iowa promoting the health of its residents.

In response to a question, Mr. Streit also stated that secondhand smoke causes lung cancer and heart disease, and should be considered a safety issue.

H. Workers' Perspective on Smoke-free Casinos

Mr. Adam Swihart, representative of the American Federation of State, County, and Municipal Employees (AFSCME), presented to the committee on behalf of employees of Prairie Meadows Casino. Mr. Swihart stated that nonsmoking sections at casinos are generally ineffective because the air smells like smoke throughout the building despite the use of air filtration systems. In addition, he noted that employees are still subject to secondhand smoke throughout the rest of the casino because employees at table games are prohibited from waving smoke away from themselves and from asking that a customer not smoke. He urged the committee, when considering how many customers would be lost by prohibiting smoking in casinos, to also consider how many customers would be gained by enacting a prohibition on smoking.

Mr. Dave Eyman, Special Agent, DCI, described his experiences working for DCI inside casino facilities. He informed the committee he was not speaking on behalf of his employer. He stated



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the air filtration systems installed in casinos do not clean the air well enough, especially on crowded nights. He described casino employees mentioning a reduction in the number of customers due to all of the smoke. He views smoking as a generational issue, and urged the committee to think about how to increase tax revenue from casinos when older smokers stop attending casinos and younger nonsmokers begin to attend. He noted that research has shown that secondhand smoke is dangerous. He further stated that while working at a casino is a well-paying job, there is still a lot of employee turnover at casinos. Finally, he commented that there is a fairness issue inherent in allowing casinos to have smoking while prohibiting it in other types of businesses.

I. Court Case Related to the Denial of the Casino License Application of Cedar Rapids

Mr. Gene Kopecky, attorney from Cedar Rapids, discussed a lawsuit against the commission over the denial of the casino license application of Cedar Rapids, which is scheduled to go to trial on June 2, 2016. He stated 67 percent of the voters in Linn County approved a casino. However, the commission denied the application of Cedar Rapids because, although Cedar Rapids was a qualified applicant, a Cedar Rapids casino would have a negative impact on the income of surrounding casinos.

Mr. Kopecky believes that the commission is required to advocate on behalf of the interests of the citizens of Iowa as required by statute. The law does not specify that the commission has a duty to protect the interests of existing casinos by nullifying the vote of the people of Linn County. He further stated that the current statutory framework does not intend for the commission to create a gaming monopoly. The objective of the commission is to regulate and supervise casinos, not to advocate for casinos or be concerned about casino profits. He noted that Iowa is a county option state, and asked whether the remaining 84 Iowa counties without a casino would now have no chance of ever being approved to have a casino. Mr. Kopecky maintains that the commission is eliminating potential fees, taxes, charitable donations, and jobs that could be created in counties that want to have a casino but do not currently have one.

In response to a question about what the lawsuit would accomplish, Mr. Kopecky responded that a declaratory order should be issued by the court that would prevent the commission from considering the existence of a casino in one county in order to deny the issuance of a license for a casino in another county. Additional committee discussion followed about the commission needing to operate more independently from the gaming industry.

II. Committee Discussion — Recommendations

The committee discussed and voted on two recommendations. The first recommendation requested that the General Assembly direct the commission to study the effects of secondhand smoke on employees and patrons of casinos. This recommendation did not pass. The second recommendation requested that the portion of the administrative rule allowing the impact of a new casino license on existing casinos to be considered by the commission when it is determining whether to grant a casino license be eliminated by the General Assembly. This recommendation also did not pass. Additional committee discussion followed regarding future legislation but no



further recommendations were presented. Members of the committee pointed out that the General Assembly should be concerned about the health of casino patrons, and that more competition in the gaming industry would improve the customer experience.

III. Materials Filed with the Legislative Services Agency

The following materials listed below were distributed at or in connection with the committee's meeting and are on file with the Legislative Services Agency. The materials may be accessed from the "Committee Documents" link on the committee's Internet Site:

<https://www.legis.iowa.gov/committees/committee?ga=86&session=2&groupID=24162>

1. FY 2011-2015 State Gaming Revenue Distribution
2. State Wagering Tax
3. Distribution of State Gaming Revenue Table
4. SF 24 (Gambling Games Licensure and Wagering Tax)
5. SF 139 (No Smoking Casino)
6. HF 255 (No Smoking Casino)
7. Gambling Casino and Restricted License Study Committee Presentation
8. Chronology of the Iowa Racing and Gaming Commission
9. Building Iowa's Communities Through Philanthropy